

Exhibit “A”

FILED ROD GILLOIR
4/1/2021 2:21:44 PM
County Clerk
Genesee County

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

CLEOPATRA THOMPSON,

Plaintiff,

CASE NO.: 21-115461-NO

v.

JUDGE DAVID NEWBLATT P-45306

NESTLE WATERS NORTH AMERICA,
INC., a foreign corporation,
SAM'S EAST, INC., a foreign corporation

Defendant.

THOMAS W. WAUN (P34224)
MICHAEL A. KOWALKO (P36893)
JOHNSON LAW, PLC
Attorney for Plaintiff
Capitol Theater Building
140 E. 2nd St., Ste. 201
Flint, Michigan 48502
(810) 695-6100

COMPLAINT AND JURY DEMAND

Plaintiff, Cleopatra Thompson, by and through her attorneys, Johnson Law, PLC, brings the following complaint against defendants as follows:

JURISDICTION

1. Plaintiff, Cleopatra Thompson, (hereinafter referred to as "Cleo") was/is a resident of Genesee County, Michigan.
2. Defendant, Nestle Waters North America, Inc. (hereinafter referred to "defendant Nestle") was/is a foreign corporation, doing business in Genesee County, Michigan.

3. Defendant Sam's East, Inc. (hereinafter referred to as "defendant store") was/is a foreign corporation doing business in Genesee County, Michigan.

4. The amount in controversy exceeds \$25,000.00.

GENERAL ALLEGATIONS

5. On or about April 13, 2020, Cleopatra became a customer of defendants by purchasing Ice Mountain water at Defendant store. (Exhibit 1, receipt)

6. The water was provided to defendant store by defendant Nestle.

7. On or about May 1, 2020, by reason of partaking of said water Cleopatra became sick, experiencing burning and soreness in her throat and mouth area.

8. On or about May 2, 2020, as a result of drinking the water Cleo went to the Clio Urgent Care Clinic where she was diagnosed with, "acute pharyngitis" (Exhibit 2).

9. The water was tested at RTI Laboratories which found:

"Results:

An aliquot of the water sample was dewatered and the resulting solids analyzed by EDS. The EDS spectrum obtained indicates the dominant presence of sodium, chlorine, carbon, and oxygen and minor mineral content. Although order analysis originally discounted chlorinated bleach as a possible contributor to the contaminant, the measured pH(12) and solids spectrum presented is consistent with a chlorinated bleach water contaminant." (Exhibit 3.)

**COUNT I - NEGLIGENCE/GROSS NEGLIGENCE/ WILLFUL AND
WANTON MISCONDUCT**

10. Plaintiff repeats and reallege paragraphs 1-9 as if fully stated herein.

11. The defendants, each of them, owed a duty to Cleo and breached said duty through their agents, servants and/or employees, by the following acts and/or omissions:

a) In failing to exercise due care and caution in the preparation, monitoring and sale of the aforesaid water, thereby contaminating and/or allowing the contamination of the water;

b) In failing to use due care and caution in the preparation, monitoring and sale of the aforesaid water so as not to cause injuries to persons invited to consume said water, including, specifically Cleo;

c) In negligently and carelessly preparing, monitoring and selling water that was not fit for human consumption and was, in fact, unwholesome, dangerous, poisonous;

d) In negligently preparing said water in violation of the city, county and state laws and regulations relating to the preparation, monitoring and sale of water to the public;

e). In failing to inspect the ingredients of the aforesaid water to ascertain whether the same was suitable for human consumption prior to said sale;

f). In negligently hiring and/or failing to employ and retain trained and competent help in the preparation, monitoring and sale of said water;

g). In failing to exercise, promulgate and/or adhere to adequate and sufficient policies, rules and regulations as to the proper procedures and care in the preparation, monitoring and sale of said water;

h). In failing to adhere to and comply with applicable state and local regulations and laws in regard to the cleanliness, preparation, monitoring and sale of water on said premises;

i) In negligently failing to adequately supervise and/or oversee the personnel responsible for the preparation, monitoring, and sale of said water;

j) Failing to take proper and definitive action to control and/or prevent the aforesaid water poisoning, when the defendants' knew, or should have known, that the water was unwholesome and not fit for human consumption;

k). In committing other acts or omissions that may be specifically ascertained by virtue of discovery, and upon the determination of such acts, plaintiff reserves the right to amend and incorporate herein.

12. The acts and omissions of defendants, by and through their servants, agents and/or employees, singularly and/or in combination with each other, also constituted gross negligence and/or willful, wanton misconduct.

13. Defendants' breach of duties constituted negligence and/or gross negligence and/or willful and wanton misconduct which was a proximate cause of the injuries and damages sustained by Cleo, which are more fully set forth below.

COUNT II – BREACH OF WARRANTY

14. Plaintiff repeats and reallege paragraphs 1-13 as if fully stated herein.

15. On April 13, 2020 Cleo purchased from defendants water supplied and/or prepared by said defendants for human consumption.

16. The defendants, at said time, knew that said water was purchased for such purposes, and did then and there warrant it as fit and wholesome for that purpose.

17. Cleo did in good faith justifiably rely and/or act upon said representations and warranties and defendants' skill and judgment as to the quality of said water when so purchased and consumed by Cleo.

18. Defendants represented and warranted to Cleo that said food was wholesome and fit for human consumption.

19. Defendants made said representations with the intention that Cleo would act and/or rely upon same.

20. The aforesaid food was not fit for human consumption by Cleo and was in fact unwholesome, dangerous, and tainted at the time of its consumption.

21. Defendants' breach of duties constituted a breach of warranty which was a proximate cause of the injuries and damages sustained by Cleo, which are more fully set forth below.

DAMAGES

22. Plaintiff repeats and reallege paragraphs 1-21 as if fully stated herein.

23. As a result of defendants' negligence and/or gross negligence and/or willful and wanton misconduct and/or breach of warranties, Cleo sustained injuries past, present, and future, including but not limited to, "acute pharyngitis".

24. As a result of defendants' negligence and/or gross negligence and/or willful and wanton misconduct and/or breach of warranties, Cleo sustained damages including but not limited to: past, present, and future physical pain and suffering, mental anguish, fright and shock, denial of social pleasure and enjoyment, embarrassment, humiliation and mortification and reasonable and necessary medical expenses.

WHEREFORE, Plaintiff requests a judgment against defendants in whatever amount she is found to be entitled in excess of \$25,000.000, together with Court costs, interest, and attorney fees.

JOHNSON LAW, PLC

Dated: 4/1/21

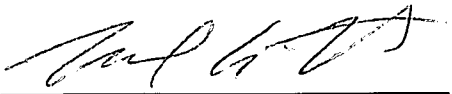
By: 
THOMAS W. WAUN (P34224)
MICHAEL A. KOWALKO (P36893)
Attorney for Plaintiff

Exhibit 1

SAH'S CLUB
CLUB HARBOR RHONDA JOHNSON
(010) 230 - 6700
FLINT, MI

04/13/20 12:58 4077 08291 005 :2862

TERE:

E	829641	SPRING WATER	6.47	N
E	542089	ICE MOUNTAIN	5.97	N
E	443819	BEEF ROAST F	20.08	N
E	430285	CAN. BACON F	9.98	N
E	980138477	CHEETOS PUFF	3.49	N
E	510043	SHARPPICCONF	7.67	N
E	953976	TWIN BROS LF	3.98	N
E	768696	FR BEANS F	5.40	N
E	431710	SPRING MIX F	4.48	N
E	980167341	ORANGES F	7.98	N
E	980167341	ORANGES F	7.98	N
E	416745	VIENNAS F	12.14	N
E	72553	RED GRAPES F	6.98	N
E	749972	STRAWBERRY F	5.98	N
E	749972	STRAWBERRY F	5.98	N
E	980213084	ASNBANCRCHF	5.78	N

DISCOUNT GIVEN 4.49
SUBTOTAL 115.93

E	534524	2% MILK F	2.34	N
E	534524	2% MILK F	2.34	N
SUBTOTAL			120.61	

TOTAL 120.61
EBT SNAP TEND 89.46
VISA TEND 37.15

VISA CREDIT **** **** *** 9605 1 1
APPROVAL # 832119

AID 80000000831010
TC F7F524C5DF408509
TERMINAL # SC010961
*NO SIGNATURE REQUIRED
CHARGE DUE 0.00

EBT SNAP SNAP PURCHASE
89.46 TOTAL PURCHASE
ACCOUNT # **** **** **** 0005 S
NET RESPONSE 09
NETWORK ID. 0087 APPA CODE 586960
TERMINAL # SC010961

	Beg Bal	End Bal
EBT CASH	0.00	0.00
EBT SNAP	89.46	0.00

Visit samsclub.com to see your savings

ITEMS SOLD 18

FCR 7148 8819 9749 7975 0239 8



*** MEMBER COPY ***

Exhibit 2

01/22/2021 13:12 CLIO URGENT CARE

(FAX)810 686 1687

P.004/006

Date: 01/22/2021

Clio Urgent Care

Page: 1

Patient Charting Note

Cleopatra Thompson , DOB: 8/15/1955

Date

Charting Summary

Provider

Clinician

INITIAL VISIT COMPLAINT:

pt went to drink water she bought but when she went to drink from the bottle she believes it contained bleach

PCP- Jami Forback

PRESENT COMPLAINT:

The patient is a 64 year old female, presenting for a new patient visit with the following condition(s):

PRESENTING PROBLEM: Sore throat.

SIGNS / SYMPTOMS: Irritation and Pain to mouth and tongue. Pt states she purchased bottled water from Sam's and states when she went to drink the water it tasted like bleach. She immediately spit it out of her mouth but believes she ingested a small amount. This occurred last night at 6 pm. She called the police who investigated the incident last night. She also called poison control and was instructed to drink water and milk. Pt states she is doing this as directed and is feeling better. She continues to c/o pain in her mouth and tongue and into throat. She is tolerating PO. No trouble breathing, no chest pain.

LOCATION: Throat.

QUALITY: Constant.

DURATION: Today.

TIMING: Constant.

CONTEXT / MECHANISM: Patient not sure of problem / illness.

ALLEVIATING FACTORS: Patient indicated no alleviating factors.

PAST MEDICAL HISTORY:

ALLERGIES / ADVERSE REACTIONS: NSAIDs., STATIN.

MEDICATIONS: Patient is taking No Known Medications.

PROBLEMS: Cardiovascular / Heart Disease. Sleep Apnea. Arthritis. Depression. Anxiety. Diabetes.

OTHER PERSONAL HISTORY: No significant history of injuries, operations or hospitalizations.

FAMILY HISTORY: Mother, Unknown living status, history of Cardiovascular Disease. Mother, Unknown living status, history of Hypertension. Mother, Unknown living status, history of Stroke. Mother, unknown living status, history of Anxiety. Mother, unknown living status, history of Depression. Mother, Unknown living status, history of Diabetes.

SOCIAL HISTORY: Patient smoking status is unknown.

WORK HISTORY: No employment details noted on intake sheet.

Completed a review of patient's allergies, current medications, active and chronic problems, surgeries and hospitalizations, family history, social / work history. (Bonzheim, Scott PA-C, 5/02/20 at 1:57PM).

01/22/2021 13:12 CLIO URGENT CARE

(FAX)810 686 1687

P.005/006

Date: 01/22/2021

Clio Urgent Care

Page: 2

Patient Charting Note

Cleopatra Thompson , DOB: 8/16/1955

Date	Charting Summary	Provider	Clinician

REVIEW OF SYSTEMS:

CONSTITUTIONAL: Patient denies: change in appetite, chills, fatigue, fever, sweats, or weight loss.

EYES: Patient denies: blurred or double vision, redness, eye pain, discharge, or use of contact lenses.

EARS, NOSE, MOUTH & THROAT: Denies all except: sore throat

CARDIOVASCULAR: Patient denies: chest pain or pressure, fainting, or irregular heart beat.

RESPIRATORY: Patient denies: congestion, cough, shortness of breath, or wheezing.

GASTROINTESTINAL: Denies all except: nausea

GENITOURINARY: Patient denies: discharge, frequent urination, nighttime urination, or painful urination.

MUSCULOSKELETAL: Patient denies: joint pain, muscle pain, or swelling.

SKIN: Patient denies: easy bruising, rash, redness, or skin sores.

NEUROLOGICAL: Patient denies: headache, light headedness, numbness, poor balance, tingling, or weakness.

EXAMINATION / OBJECTIVE FINDINGS:

Height: 67 inches. Weight: 255 pounds. BMI: 39.9. Temperature: 98.3°F. Blood Pressure: 132/68. Pulse: 81. Respiration: 19. Pulse Ox: 96%. (Entered by Provider 5/02/2020 at 12:06PM).

CONSTITUTIONAL: Patient is well- developed, well-nourished, and in no acute distress.

NEURO/PSYCH: The patient is alert and oriented x3. CNs 2-12 are grossly intact. Sensation is grossly intact.

HEAD: is normocephalic and atraumatic.

THROAT/NECK: Findings include post oropharyngeal erythema.

CARDIOVASCULAR: Heart rate and rhythm is regular. Sounds (s1/s2) are normal, with no murmurs, rubs or gallops. PMI is normal. No peripheral edema noted.

PULMONARY/CHEST: There is no respiratory distress or accessory muscle usage noted. No chest wall tenderness. Lungs are clear to auscultation throughout. No wheezes, rales, or rhonchi noted.

MUSCULOSKELETAL: There is no tenderness, swelling, or deformity. DTRs and peripheral pulses are intact and normal.

SKIN: is warm and dry. No rashes or lesions are noted.

ADDITIONAL FINDINGS: Mild erythema noted to posterior pharynx. No ulcerations. No tongue or

01/22/2021 13:13 CLIO URGENT CARE

(FAX) 810 686 1687

P.006/006

Date: 01/22/2021

Clio Urgent Care

Page: 3

Patient Charting Note
Cleopatra Thompson , DOB: 8/15/1955

Date	Charting Summary	Provider	Clinician
01/22/2021	Initial Acute pharyngitis, unspecified. Condition uncomplicated, stable.	Dr. [Signature]	Dr. [Signature]

posterior pharyngeal swelling.

ASSESSMENT:

Initial Acute pharyngitis, unspecified. Condition uncomplicated, stable.

Initial Toxic effect of unsp corrosive substance, accidental, init. Condition uncomplicated, stable

TREATMENT / ORDERS:

Pt instructed to continue to follow poison control guidelines. ER if sx worse.

TREATMENT PLAN / INSTRUCTIONS:**FOLLOW-UP INSTRUCTIONS:**

Follow up with Primary Care Physician (PCP) within 2 days . If symptoms worsen before PCP visit return to the Urgent Care. If symptoms are severe, go to the nearest emergency room immediately.

FOLLOW UP APPOINTMENT:

I recommend patient return to urgent care as needed (PRN) for follow up care.

PATIENT ACKNOWLEDGEMENT:

Patient expresses an understanding of the treatment plan and follow up instructions.

Signature:



Date: 5/02/2020 2:02PM

Exhibit 3



RTI LABORATORIES



- Report of Analytical Services -

Submitter:

Johnson Law, PLC
140 E. 2nd Street Ste 201
Flint, MI 48502

Report Date: 12/08/2020

Phone:(810) 695-6100

FAX:

Attn: Michael Kowalko

P.O. Number:

RTI Lab#: 2007526

Client Sample ID: Ice Mountain

Ht #:

Sample Type: Ice Mountain Contaminant

Sample Receipt Date: 07/23/2020

A water sample was received for analysis. The target of the analysis was to elementally characterize the water sample solids using techniques of EDS (Energy Dispersive X-ray Spectroscopy) for quantitative identification of elements with atomic number greater than five. The results of the analysis are discussed below.

Results:

An aliquot of the water sample was dewatered and the resulting solids analyzed by EDS. The EDS spectrum obtained indicates the dominant presence of sodium, chlorine, carbon and oxygen and minor mineral content. Although odor analysis originally discounted chlorinated bleach as a possible contributor to the contaminant, the measured pH (12) and solids spectrum presented is consistent with a chlorinated bleach water contaminant.

Approved By **Lloyd Kaufman**
Director of Materials Sciences

The data and information presented herein, while not guaranteed, are to the best of our knowledge accurate and true. No warranty or guarantee implied or expressed is made regarding these analytical results, since securing and properly preserving representative samples and since sample custody chains are beyond RTI control. The results provided by RTI are neither intended to suggest product merchantability, nor for use in infringement of any existing patent. RTI will not assume any liability or responsibility for any such infringement. Alteration or reproduction other than in its entirety is not authorized by RTI Laboratories, Inc. It is implied that some or all of the parameters reported herein are not covered by accreditation scope. Accreditation scope documents can be inspected at www.rtilab.com or are available by request. A2LA certificate numbers 570.01 and 570.02. The recording of False, Fictitious or Fraudulent Statements or entry on this document may be punishable as a Felony under Federal Statute. All testing performed under RTI quality manual I-QAO-001 rev L issued Dec. 2008 and has been audited and deemed compliant to ISO Guide 17025 rev. 2005.

2007526

33080 INDUSTRIAL RD LIVONIA, MI 48150 (734) 422-8000 FAX (734) 422-5342
E-mail: information@rtilab.com Website: rtilab.com

Page 1 of 2

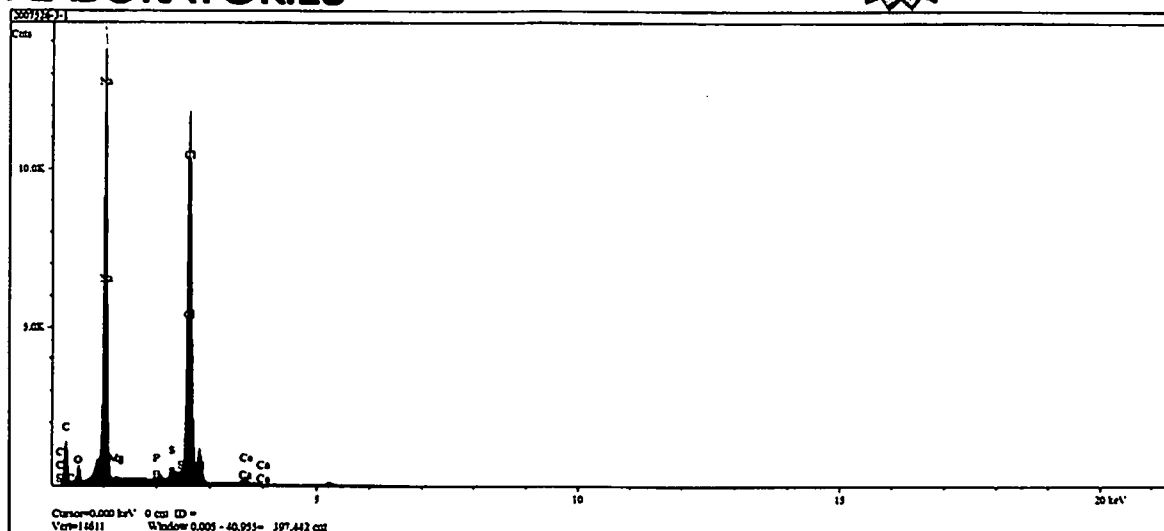

RTI LABORATORIES


Figure 1 – EDS spectrum obtained from the suspended/dissolved solids of the water sample

Elt.	Line	Intensity (c/s)	Atomic %	Conc	Units	Error 2-sig	MDL 3-sig
C	Ka	1,094	53.153	33.612	wt.%	0.726	0.517
O	Ka	408.83	5.863	4.939	wt.%	0.200	0.195
Na	Ka	12,485	22.833	27.637	wt.%	0.160	0.048
Mg	Ka	52.95	0.110	0.141	wt.%	0.039	0.057
P	Ka	62.81	0.085	0.138	wt.%	0.034	0.050
S	Ka	369.00	0.464	0.783	wt.%	0.043	0.052
Cl	Ka	13,120	17.093	31.906	wt.%	0.181	0.061
Ca	Ka	242.06	0.400	0.843	wt.%	0.050	0.056
				100.000	100.000 wt.%	Total	

kV 15.0
Takeoff Angle 30.0°
Elapsed Livetime 10.0

FILED ROD GILLIG
4/1/2021 2:21:45 PM
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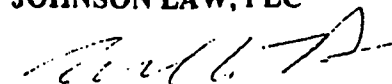
JURY DEMAND

NOW COMES the Plaintiff, Cleopatra Thompson, by and through her attorneys,
JOHNSON LAW, PLC, and hereby makes demand for a jury in the above captioned matter.

Respectfully submitted,

JOHNSON LAW, PLC

By:



THOMAS W. WAUN (P34224)
MICHAEL A. KOWALKO (P36893)
Attorneys for Plaintiff

Dated: 4/1/21